The Basics of Islamic Jurisprudence

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A description of the general and specific topics that are covered in Islamic .jurisprudence such as terminologies, sects, sources and subjects

Introduction

وَمَا كَانَ الْمُؤْمِنُونَ لِيَنفِرُواْ كَآفَّةً فَلَوْلاَ نَفَرَ مِن كُلِّ فِرْقَةٍ مِّنْهُمْ طَآئِفَةٌ لِّيَتَفَقَّهُواْ فِى الدِّينِ وَلِيُنذِرُواْ قَوْمَهُمْ إِذَا رَجَعُواْ إِلَيْهِمْ لَعَلَّهُمْ يَحْذَرُونَ

Nor should the Believers all go forth together; if a contingent from every expedition remained behind, they could devote themselves to studies in religion, and admonish the people when they return to them, that thus they (may learn) to guard themselves ((against evil).(١

Man lives in this world and interacts with all that is in it. There are various relationships between man and the different beings of this world and there are relationships .between man and Allah, the most high

Every relationship is different. A relationship can be between man and Allah, a person and his family, a person and society, a person and government or between one family and another, one society and another or one government and another. People want to act according to their knowledge or according to revelation regarding these .relationships in order that they can be prosperous and successful

The divine commands that create the perfect path for man to walk onto must be .inclusive of all different aspects and dimensions of life

The Islamic legal system organizes people's lives in all dimensions, individual or social. This system is called 'al-ahkām al-shar'īyyah'. Islamic

p: ۱

۱- ۹:۱۲۲

jurisprudence explains this system and is one if the deepest and widest Islamic .science

.Islamic jurisprudence is one of the sciences that glorify the Islamic civilization

This jurisprudential system started with the proclamation to prophethood. Its .principles were perfected during the life of the prophet

We will try, in this humble effort, to describe the important general and specific topics that are covered under jurisprudence. The style of this book is in the form of a book to .be taught in schools and it is a prelude to the field of comparative jurisprudence

I ask Allah, the most high, to make this effort fruitful and to grace me by accepting it .and to correct our intentions and actions. Definitely, he is the best helper

Also, I give special thanks to professor, Shaykh Mahmūd al-Sayf and professor, Dr. .Ya'qūb 'Alī Barjī for their remarks and guidance

Hassan al-Ridā'ī

Hijrī - Qum al-Muqadasah ١۴٢۶

The Literal and Figurative Definition of Jurispudence

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The Arabic term for jurisprudence (fiqh) literally means: knowledge about something (and understanding it; being clever.(١

Fiqh's literal definition does not only mean understanding a word, instead it is a deep :knowledge about it. Fiqh has been used in the Qurān in this meaning

لَهُمْ قُلُوبٌ لاَّ يَفْقَهُونَ بِهَا

(They have hearts wherewith they understand not.(٢

Figuratively, fiqh means: knowledge about Islamic legal rulings from their sources. So, fiqh's figurative definition is taken from its literal one in the sense that deriving

religious rulings from their sources necessitates the mujtahid(٣) to have a deep understanding in the different discussions of jurisprudence. He must

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١- Ibn Manzūr, Lisān al-'Arab

٢- ٧:١٧٩

٣- To be discussed later.

look deep down into a matter and not suffice himself with just the apparent meaning. (A person who only knows the appearance of a matter is not a faqīh.(١)

The subject of thinking deeply (tafaquh) about religion has been repeatedly mentioned in the Qurān and traditions transmitted from the prophet (s) and the Imāms (a). What is taken from them, on a whole, is that Islam wants man to deeply understand religion. Of course, this understanding covers such subjects as Islamic theology, Islamic ideology, ethics, Islamic upbringing, the Islamic social system, worship, religious rulings and manners that one must have in his individual and social life. The term 'fiqh' has become popular amongst Muslims since the second century after the Hijra A.H. to mean Islamic jurisprudence or the art of deriving religious rulings from their sources. It has obtained the following meaning: a precise and deep (understanding and ability to derive religious rulings from their sources.(٢

The Meaning of Fiqh

Nowadays, the term fiqh is generalized to mean Islamic sciences or Islamic rulings in the broad sense. The broad meaning of Islamic rulings is broken up into three :fundamental categories

١. Theology; what is obligatory for a mukallaf to believe about Allah, his angels, books, .messengers and the Day of Judgment

٢. Ethics; the positive traits that a mukallaf must obtain and the negative traits that he .must stay away from

٣. Actions; the actions that a mukallaf must perform.

This is proved by the tradition from the prophet (s) who said: "Whoever wants Allah

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١- Tafsīr al-Manār, volume ٩, page ۴٢٠

٢- Shahīd Muttaharī, Madkhal Ila al-'Ulūm al-Islamīyyah, page ٣

to treat him favorably must have a deep understanding (yafqahu) in religion.”[1]

Here, the word fiqh is used in its general sense, synonymous of Islam.

When the different sciences are categorized the term fiqh is used to mean the Islamic rulings regarding one's actions.

Fiqh, in its specific meaning and what is discussed in books of fiqh, includes everything that has to do with all aspects of man's life. Everything that is studied today including foundational laws, city management, family relations, individual actions, management, politics, etc is found in the different sections of fiqh.[2]

Shari'ah and Fiqh

Sharīʹah encompasses what was decreed in the time of prophethood found in the Qurān and prophetic traditions.

Fiqh is what has been gained from the efforts of scholars after the prophet's (s) demise.[3]٩

The Importance of Jurisprudence

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Allah, the creator of mankind and the world with all its precision and secrets, emphasizes in the Holy Scriptures that man needs order in his worldly life and needs to find the path that leads him to his purpose, which is the eternal blessings of the next life.

Man's divine disposition (fitrah) necessitates him to follow religion and religious laws. The reason for this is that man, as shown in his nature and throughout history, is unable to understand what is good and what is bad for him in every situation.

Jurisprudence, which discusses the divine code, teaches us religious laws which give order to our worldly life, which give us benefit, which take us away from corruption and show us the path that leads man to

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۱- Nayshāpūrī print) Muslim, Sahīh, volume ۳, page ۹۵)

۲- Shahīd Muttaharī, Madkhal Ila al-'Ulūm al-Islamīyyah, page ۴۵

۳- Ayatollah Ja'far Subhānī, Tārīkh al-Fiqh al-Islamī wa Adwārihi, page ۶

.his purpose

The Special Qualities of Jurisprudence

• Inclusiveness; it includes everything needed to manage and give order to man's life in every aspect and dimension. Jurisprudence gives order to man's life in every different situation, for example: worship, social relations, business deals, personal affairs such as marriage, divorce, inheritance, adequate support (nafaqah), family rights, legal matters, government, war, enjoining the right and forbidding the wrong, .charity and punishments

• (Easiness; there is no divine law that puts a mukallaf in extreme difficulty.(١

• Congruence with man's nature; a law that is against one's divine disposition cannot be found. The reason for this is that the one who makes the divine laws is the same one who created man and who knows the secrets of his soul. For this reason it is (possible for Islamic jurisprudence to be in congruence with man's divine disposition.(٢

• (Balance; There is no excessiveness in jurisprudence.(٣

.Islamic jurisprudence is what connects this world to the next

Jurisprudence Jargon

(Duty (Taklif

The Arabic term taklīf is derived from the term kulfah which means difficulty. It is used to mean the forcing of an action. For example the sentence; Zayd forces (kallafa) 'Amr .to do an action; he forces him

Divine laws are called taklīf because they are sent from the Master, glory be to him, .and it is necessary for the mukallaf to obey them

So, taklīf means a forced action given to an adult by the Master, glory be to him. These actions encompass different aspects of man's life, for example

۱- Refer to ۲۲:۷۸

۲- Refer to ۳۰:۳۰

۳- Refer to ۲:۱۴۳

his personal life, his worship, his family life and his social life. These laws give order to his life. Examples of these laws are: prayer being obligatory and adultery being forbidden.(١)

Ijtihad

From the beginning of Islam until its middle ages there was another word for fiqh, it was ijtihād.

Ijtihād is derived from the term juhd which means effort and struggle. The jurist is called a mujtahid because of his efforts and struggle in making religious rulings.

The word istinbāt has a similar meaning. It is derived from the word nabat (al-mā') which literally means taking water out of the ground. A jurist performs a similar action when he struggles to take the religious ruling from its source.(٢)

The term ijtihād is used by the religious scholars to mean obtaining a proof for a religious ruling.(٣)

The Necessity of Ijtihad

Islamic rulings are not mentioned for every situation. That would be impossible, because there are countless situations that happen all the time. Instead it gives general principles and rules.

Therefore, when a jurist must make a ruling for a certain situation he must look into the official sources and give his ruling. Here is where fiqh is synonymous with a deep, precise and inclusive understanding.(٤)

Mujtahid

Definition: a mujtahid is one who has reached the level of ijtihād in understanding religious laws. This means that he has the ability to deduct religious rulings from the Qurān and traditions.

This mujtahid is able to deduct religious laws in all the subjects that the mukallaf

needs or only certain subjects because of

Muhammad Bāqir al-Sadr, Halaqah ۱, page ۱۲۶ -۱

Shahīd Muttaharī, Madkhal Ila al-'Ulūm al-Islamīyyah, page ۱۰ -۲

Alī Mishkīnī, Istilāhāt al-Usūl, page ۱۸' -۳

Shahīd Muttaharī, Madkhal Ila al-'Ulūm al-Islamīyyah, page ۸ -۴

their ease. In the first case he is called a pure mujtahid and in the second a minor mujtahid.

The sciences that a mujtahid needs to know in order to be able to deduct religious rulings are:

۱. Arabic grammar; syntax, morphology, vocabulary and eloquence. The reason for this is that the Qurān and traditions are in Arabic and it is impossible to understand the Qurān or the traditions without knowing Arabic.

۲. Tafsīr; the mujtahid will have to refer to the Qurān so he must have a general knowledge of tafsīr.

۳. Logic; because every deductive skill needs logic. Logic teaches one how to define something and how to deduce something.(۱)

۴. The science of traditions: a mujtahid must know about traditions and their categories.

۵. The science of rijāl: This is the science of knowing the individual in the chains of narrations; knowing if they are trustworthy or not. The reason for this is that one cannot accept everything that is narrated unless it is narrated by trustworthy people.

۶. The principles of jurisprudence: This is one of the most important sciences that the mujtahid must know because they are the rules that are applied in all of the different sections of jurisprudence.

Taqlid

Taqlīd means acting according to the verdict of a mujtahid. Taqlīd shifts the responsibility of finding the religious ruling from the person performing taqlīd to the mujtahid.

Taqlīd is one of the ways of finding a religious ruling, like ijtihād. Except that ijtihād is a direct way

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۱- Hādī al-Fadlī, Dūrūs fī al-Fiqh al-Imāmīyyah, page ۳۹

and taqlīd is an indirect way, because one reaches the religious ruling from the ijtihād .of another

The proof for taqlīd being permissible or obligatory is the actions of sane people. Sane people find it necessary for an ignorant person to refer to a scholar. The referral of the ignorant to the scholar is something seen in every society that man has been in. It is even seen today. An example of it is when a non-specialist refers to a specialist.(۱)

One is dependent on taqlīd in finding out religious rulings except in the cases where one knows a religious rule. One can know a religious rule by having certainty about it which is possible without struggling and without study. Examples of these are some of the obligatory actions, many of the recommended actions and most of the permissible actions which are known by most of the people who live in religious areas. Or, one can know the religious rule because of it being self-evident like the obligation of prayer or .the forbiddance of drinking wine

Precaution

Precaution ihtiyāt means: the mukallaf performing everything that he suspects to be obligatory but does not suspect it to be forbidden or refraining from performing anything that he suspects to be forbidden but does not suspect it to be obligatory. The mukallaf must know the different instances of precaution to be able to do this. He must know every place where it is suspected to be obligatory and not suspected to be forbidden or it

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۱- Hādī al-Fadlī, Dūrūs fī al-Fiqh al-Imāmīyyah, pages ۲۵۲-۲۵۴

is suspected to be forbidden and not suspected to be obligatory. This knowledge does .not come without looking at verdicts from different mujtahids

So, precaution is another tool of finding the religious ruling. It is different than the previous two, ijtihād and taqlīd. The mujtahid reaches the religious ruling from his efforts while the person who performs taqlīd obtains the exact rule from the mujtahid. But, the person who performs precaution only gets a general understanding of the rule. The reason for this is that the religious ruling for him is something dangling (between obligation, recommendation or permission.(١)

Precaution is a way of becoming certain that one has performed the real religious :ruling. Precaution is divided into two categories

١. Obligatory precaution: the mukallaf must act according to precaution if he wants to stay on the taqlīd of whoever he performs taqlīd to. But, in this ruling, he or she can act upon the verdict of another scholar if he wants to change the person who he performs taqlīd to. The condition that must be followed is that he must change from .the most knowledgeable to the next most knowledgeable and so on

٢. Recommended precaution: the mukallaf does not have to act according to this .precaution, but it is better to do so

The Jurisprudential Sects of Islam

point

We learned that Islamic jurisprudence is the knowledge of Islamic laws, what is permissible and what is forbidden, what is obligatory, what is disliked (not recommended, unfavorable) and what is recommended (favorable), and what is

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١- Hādī al-Fadlī, Dūrūs fī al-Fiqh al-Imāmīyyah, pages ٢٥٥-٢٥۶

.correct and what is incorrect

We also know that these Islamic laws are derived from the Qurān and prophetic .traditions

We also know that the Muslims in the time of the Prophet (s) would take their religious rulings from him. They would take the rulings that had to do with worship, like prayer, pilgrimage, fasting and spiritual purification, or the rulings that had to do transactions like trade, partnership, rent, land, marriage and divorce and other rules that are found .in the religion from him

Then, after his death, some situations arose in one's prayer, fast, life, business, partnership or pilgrimage…etc that did not occur during the Prophet's (s) lifetime. They needed to know what the religious ruling was. In this case they would refer to some of the companions to take the ruling from them. Some took rulings from Imām 'Alī bin Abī Tālib (a), some from 'Abd Allah bin 'Abbās and some from 'Abd Allah bin Mas'ūd. 'Alī (a) was the most knowledgeable companion; the Prophet (s) said the following about him: "I am the city of knowledge and 'Alī is its entrance."(١)

But, we see some different verdicts passed by different companions and the generation that came after them called the tābi'īn. There were many mujtahids and many differences in verdicts, but there were no jurisprudential sects like there are today. The Muslims would refer to the scholars amongst the companions, tābi'īn and Imāms (a) for the religious rulings that they needed. Imām 'Alī bin al-Hussayn al-Sajjād (a), Imām

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١- Al-Sharīf al-Murtada, Tanzīh al-Anbiyā', page ٢١٢

Muhammad bin ‘Alī al-Bāqir (a) and Imām Ja‘far bin Muhammad al-Sādiq (a) lived in .these times

How Jurisprudence sects were formed and when

The divisions of Muslims became widespread after the murder of the third khalīfa, ‘Uthmān bin ‘Affān. At that time the Muslims swore allegiance to Imām ‘Alī bin Abī Tālib (a) but Mu‘āwīyah bin Abī Sufyān refused to swear allegiance to him. Nobody followed him in this except the people of Syria. He formed his own, autonomous government there. He also took some jurists and some people who related traditions .with him, and thus the major division was started

At the same time where the Muslims and the great companions believed ‘Alī (a) to be the rightful khalīfa and the most knowledgeable person war was started between him and Mu‘āwīyah bin Abī Sufyān. Here, the belief in the Ahlul-Bayt (a) grew. The Ahlul-Bayt are glorified in the Qurān. Allah said that he removed all impurities from them and purified them a thorough purification. Allah also made it obligatory to love them .and accept their authority

A shi’a (follower) of the Ahlul-Bayt (a) is one who loves them, obeys them and believes .in their rights

The Shia had a strong presence during the fight with Mu‘āwīyah and after Imām ‘Alī bin Abī Tālib's martyrdom when his son al-Hassan (also the son of the daughter of the prophet) became the khalīfa. After that a big argument arose between Imām al-Hussayn bin ‘Alī bin Abī Tālib (a) and Yazīd bin Mu‘āwīyah which lead to a war between them in

a place called Karbalā', Iraq. This war took place on the tenth day of the Islamic month 'Muharram' in the ۶۱stA.H.. Imām Hussayn and ۷۸ of his companions and family .members were martyred in this war

With all of this, there were not jurisprudential sects of Islam as there are today. There were two different sects at that time. One of them followed the Ahlul-Bayt (a) those that Allah cleansed from all impurities and purified them a thorough purification, those who did not say anything except what their forefather, the messenger of Allah (s) said. The Ahlul al-Bayt (a) are none other than Imām 'Alī, Hassan, Hussayn and the nine Imāms that came from his lineage (a). The other group followed the Umawī (Umayyad) judges. Of course amongst the Umawī judges there were different .opinions and various verdicts

At the end of the first century A.H. different jurists appeared and the Islamic sciences took form. Examples of these jurists are: Sa'īd bin al-Mussayab, al-Hassan al-Basrī and Sufyān al-Thawrī who lived in the same time as Imām Muhammad al-Bāqir bin 'Alī .bin al-Hussayn bin 'Alī bin Abī Tālib. The scholars of this time learned from him

Islamic jurisprudence started to spread out in the second century A.H. Islamic jurisprudential sects also started to form because many jurists appeared and they made many religious verdicts which differed from the verdicts of others. Some of the differences include leaving the arms down in prayer or crossing them or in some of the rulings

.regarding wudū', fasting, divorce, inheritance, etc

The jurisprudential sects of Islam that are taught and have scholars and students all :over the world are

.The Ahlul-Bayt (a) sect. It is also called the Ja'farī sect or the Shia Imāmīyyah sect .۱

.The Hanafī sect .۲

.The Mālikī sect .۳

.The Shāfi'ī sect .۴

.The Hanbalī sect .۵

:Each of these jurisprudential sects will be described

The Ahlul-Bayt (a) Sect

It must be stated that the Ahlul-Bayt (a) do not have a separate sect, or different laws than their forefather Muhammad (s). Instead, they continued his path and were taught by him. Rules pertaining to worship, contracts and other miscellaneous subjects are all taken from one source full of wisdom and light, which is none other than the Prophet (s). Imām al-Sādiq (a) said: "We do not give any legal rulings or ethical advice unless it was passed to us by our great father who obtained it from the Prophet (s)." So, their traditions, unless changed, depict the essence of Islam that was (sent from the lord of the worlds.(۱

The Ahlul-Bayt (a) sect is also named the Ja'farī sect attributed to Imām Ja'far al-Sādiq bin Muhammad al-Bāqir bin 'Alī (Zayn al-'Ābidīn) bin al-Hussayn (al-Sibt) bin 'Alī .(bin Abī Tālib (a

It is also named the Shia Imāmīyyah sect because of their belief in the ۱۲ Imāms from .(the Ahlul-Bayt (a

Imām Ja'far al-Sādiq (a) was the Imām of the Muslims in his time. He was the teacher of scholars and famous for his greatness, knowledge, abstinence from the world and

.worship

Bāqir Sharīf al-Qurayshī, Tuhfaāt min Sīrat A'imah Ahl al-Bayt (a), page ۱۲ -۱

Imām Ja‘far al-Sādiq (a) was born in the ۸۲ndA.H., during the Umayyad reign. He taught and spread Islamic sciences in the prophet's mosque, just like his forefathers did. He would relate traditions from his father, al-Bāqir (a) who related them from his forefathers all the way up to the messenger of Allah (s). He gave ۱۰۰۰ jurisprudential verdicts and was ahead of the scholars of his time in Islamic sciences, for example .theology, tafsīr (exegesis) and everything else Muslims treasured

.There were around ۴۰۰۰ religious students that related traditions from him

Some of Imām al-Sādiq's (a) students were experts in the prophetic traditions and leaders of different sects, for example: Imām Abī Hanīfah (the leader of the Hanafī .(sect) and Imām Mālik bin Anas (the leader of the Mālikī sect

The Ahlul-Bayt jurisprudential sect has spread today to different areas of the Islamic world, for example Iraq, Lebanon, Iran, Pakistan, Indonesia, Turkey, Saudi Arabia, .India, Azerbaijan, etc

The Hanafi Sect

.This sect is called the Hanafī sect because of its imām, Abī Hanīfah

Abī Hanīfah's full name is al-Nu‘mān bin Thābit bin Zūtī al-Fārsī. His forefathers were .from Kabul. Abī Hanīfah was born in the ۸۰thA.H. and died in the year ۱۵۰ in Baghdad

Abī Hanīfah grew up in Kūfa and spent half of his lifetime working as a merchant before he became a seminary student and teacher. He studied under Hammād bin Abī Salamah for eighteen years before he became a scholar himself. He was one of the big scholars of his

time and reached the level of ijtihād. He accepted voting and syllogism qiyas in addition to the Qurān and prophetic traditions as tools for deriving religious rulings or fatwa. Many scholars of his time refuted him on this issue. In this regard, both Imām Muhammad al-Bāqir (a) and Ja'far al-Sādiq (a) said that when making a fatwa one must stick only to the Qurān and the prophetic traditions.

His sect spread in Iraq and later in other areas of the Islamic world. Abī Hanīfah lived for ۵۲ years during the Umayyad reign, but did not accept them. Rather, he believed that the rule khilafat should be given to the family of 'Alī (a). He even ruled in favor of the 'Alawī uprising lead by Zayd bin 'Alī bin al-Hussayn bin 'Alī bin Abī Tālib and allowed money that was collected from zakāt taxe to be spent on the uprising. It should be mentioned that Zayd bin 'Alī bin al-Hussayn tutored Abī Hanīfah for two years and 'Abduallah bin al-Hussayn bin 'Alī bin Abī Tālib was also one of his tutors.

The Umayad rulers asked him to become a judge and he refused. Because of this, they put him in prison and whipped him for days, until he was on the brink of death. Then, the prison warden helped him to escape and he fled to Mecca. Afterwards, he was travelling between Mecca and Medina pretending to be a nomad. During this period of time he studied for two years under

Imām al-Sādiq (a). He has a famous saying describing this experience: “If it wasn't for these two years, al-Nu‘mān would have perished.” He stayed there until the end of .rule of the Umayyad dynasty on the hands of the Abbasid dynasty

When the Abbasid dynasty came to power, Abī Hanīfah refused to help them. Al-Mansūr imprisoned him and ordered him to be lashed ۱۲۰ times which resulted in his .death

The Maliki Sect

This sect is named its founder Imām Mālik bin Anas bin Mālik al-Asbahī who was a .member of the Yemenite al-Asbah tribe

Mālik bin Anas was born in Medina in the ۹۳rdA.H.. He was a student of some of the Islamic jurists of his time including Nāfi‘, Mawla ‘Abduallah bin ‘Umar and Ibn Shahāb al-Zahrī. He also studied under Imām Ja‘far al-Sādiq (a) and related traditions from ".him. He said: “I have not seen anyone better than Ja‘far bin Muhammad

He lived under the Umayyad rule for forty years and during this time he did not .portray himself as a scholar

When the Umayyad dynasty fell and the Abbasid dynasty came to power he showed inclination towards the family of ‘Alī bin Abī Tālib (a) and ruled that they were the legitimate rulers and that rule khalafah was their right. He passed a verdict making it obligatory to aid Muhammad bin ‘Abd Allah bin al-Hassan bin ‘Alī bin Abī Tālib who revolted against the Abbasid dynasty. As a punishment, Ja‘far bin Sulaymān, the Abbasid governor of Medina at the time, ordered him

.to be lashed ۵۰ times. The lashes were so hard that his shoes fell off

Later on, the Abbasid khalīfa, Abū Ja‘far al-Mansūr changed his mind and improved his relations with Imām Mālik. He asked Imām Mālik to write a jurisprudential book, in accordance to his sect, to be published. Imām Mālik wrote the book Al-Mūattā', the book of religious verdicts, and the Mālakī jurisprudential sect became the official sect of the Abbasid Empire and missionaries were sent as far as Africa and Indonesia to preach Al-Mūattā' and the Mālakī sect. Imām Mālik differed from Abī Hanīfah on his views regarding voting and syllogism as valid sources of religious rulings. He died in ..the ۱۷۹thA.H

The Shafi'i Sect

This sect was named after its founder Imām Muhammad bin Idrīs bin ‘Abbās bin ‘Uthmān al-Shāfi‘ whose lineage traced back to Hāshim, the son of ‘Abd al-Muttalib, .the Prophet's (s) grandfather

Imām Shāfi‘ī was born in the ۱۵۰thA.H., the same year that Abī Hanīfah died. He was an orphan and his mother raised him in Yemen. When he reached ۱۰ years of age he went to Mecca to learn reading and writing. He then lived in the desert for ۱۷ years before becoming a religious student. He studied under the scholars of his time such as Muslim bin Khālid al-Makhzūmī and Mālik bin Anas (the founder of the Mālikī sect and .the author of al-Mūattā'.) When Imām Mālik passed away he returned to Yemen

During Rashīd's reign, he was charged with helping the ‘Alawī movement

along with others by the governor of Yemen. He was then sent to Baghdād to be tried. .Many were killed but Shāfi‘ī was saved

He then migrated to Egypt and preached his sect there. His sect was also spread by .his students in other parts of the Islamic world. Imām Shāfi‘ī died in the ۱۹۸thA.H

He has said: “If there is a prophetic tradition in opposition to my view, throw my view (against the wall.”(۱

The Hanbali Sect

This sect was named after its founder Ahmad bin Muhammad bin Hanbal who was an .Arab

He was born in Baghdād in ۱۶۴ A.H. He started his studies there at the age of ۱۵. He studied under both Imam al-Shāfi‘ī's and ‘Ali Abī Yusif al-Qādī (Abī Hanīfah's student.) He also studied under different scholars of his time, such as Harīz, one of Imām .Sādiq's (a) students

This sect was spread like the other sects. This sect is still practiced in the Arabian Peninsula and other parts of the Islamic world. Ahmad bin Hanbal died in Baghdād in .۲۴۱ A.H

The History of the Ahlul-Bayt (a) Jurisprudential

The Three Stages of the Ahlul-Bayt (a) jurisprudence Sect

point

An important point about the history of the Ahlul-Bayt (a) jurisprudential sect is that it is divided into different stages. Each stage will be described. An important point about the history of the Ahlul-Bayt (a) jurisprudential sect is that it is divided into different .stages. Each stage will be described

The First Stage

This was the stage of the narration of traditions from the Imāms (a). This stage starts

from the early days of Islam and ends at the

Asad Haydar, Al-Imām al-Sādiq wa al-Madhāhib al-Arba‘h, volume ١, page ١٧٥ -١

.Lesser Occultation in ۲۶۰ A.H

Jurisprudence, in this stage, was narrating traditions. Companions would hear a tradition from one of the infallibles (a) and spread it to their communities without .organizing them into different subjects

The first text that was written, other than what the Commander of the Faithful (a) wrote, was written by Abī Rāfi‘, a companion of the prophet (s) and Imām ‘Alī (a). He .wrote a book called Kitāb al-Sunan wa al-Ahkām wa al-Qadāyā

His son, ‘Alī bin Abī Rāfi‘, the Commander of the Faithful's (a) scribe, wrote a book .using the different sections of jurisprudence, for example wūdū and salat

Jurisprudential texts increased during the imamate of Imām Bāqir and Sādiq (a) due to the weakness of the Umayyad dynasty during its last days and power being shifted .to the Abbasid dynasty

Jurisprudential texts continued to grow, so much so that during the time of Hurr al-‘Āmilī there were ۶۶۰۰ texts. ۴۰۰ of these texts became famous and were called the ۴۰۰ principles. The four great books of the Shia written by the three great scholars(۱) .were compiled from these books

The city of Medina was the center of Islamic studies for the Ahlul-Bayt (a) during this period until Imām Sādiq (a) moved to Kufa and the second center of Islamic studies .was formed

Al-Hassan bin ‘Alī al-Washā' said: “I witnessed ۹۰۰ scholars who all said that they heard so and so from Ja‘far bin Muhammad (a) in this mosque (Masjid al-Kūfa).”(۲)

The Imām had great companions in

۱- Muhammad bin Ya‘qūb al-Kulaynī – al-Kāfī, Muhammad bin ‘Alī bin al-Hussayn al-Sadūq – Man Lā yahduruhu al-Faqīh, Muhammad bin al-Hassan al-Tūsī – al-Tahdhīb

.and al-Istibsār

’Al-Najāshī, Rijāl al-Najāshī, under al-Washā -٢

Kūfa, such as Abān bin Taghlib who related ۳۰,۰۰۰ traditions and Muhammad bin Muslim who related ۴۰,۰۰۰.

When we say that jurisprudence in this stage was just compiling and spreading traditions rather than organizing them into different sections, we do not mean that this includes the big scholars of the time. Each one of them was an authority in themselves, like Muhammad bin Muslim, Zarārah ibn A'yan and Abī Basīr. Imām Sādiq (a) said: "Burīd bin Mu'āwīyah al-'Ajalī, Abī Basīr Layth al-Bakhtarī al-Murādī, Muhammad bin Muslim and Zarārah will be given the glad tidings of Heaven. They believe in Allah about the obligatory actions and forbidden ones. The line of prophethood would have discontinued if it were not for them."(۱)

The Imām considered them mujtahids who had the capability of deriving verdicts from the Qurān and prophetic traditions. Sometimes he (a) would order them practice it, for example he (a) said: "It is upon us to tell you the principles and it is upon you to branch them out."(۲) He (a) also told people to refer to some of his companions in religious rulings, like Yūnis bin 'Abd al-Rahmān. Someone asked the Imām: "It is not possible for me to come to you and ask everything that I need about religious sciences. Is Yūnis bin 'Abd al-Rahmān trustworthy; can I take whatever I need from him?"

The Imām answered: "Yes."(۳)

He (a) also ordered some of his companions to give religious verdicts, such as Abān bin Taghlib. The Imām (a) told him: "Sit

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۱- Shaykh al-Tūsī, Rijāl al-Kashī, under Abī Basīr Layth al-Murādī

۲- Al-Hurr al-'Āmilī, Wasā'il al-Shī'ah, the ۶th chapter of the qualities of a judge, tradition ۵۱

۳- Al-Hurr al-'Āmulī, Wasā'il al-Shī'ah, the ۱۱th chapter of the qualities of a judge, tradition ۳۳

in Medina's mosque and give religious verdicts to the people. Verily I love to see my Shia to be like you."(١)

The Second Stage

This stage started at the Minor Occultation in ٢۶٠ A.H., and lasted until the days of Shaykh Tūsī who lived between ٣٨۵ A.H. and ۴۶٠ A.H.

In this stage the Ahlul-Bayt (a) jurisprudential sect transformed from merely relating traditions without organizing them into different sections into writing jurisprudential books without adding anything to the traditions or changing their terminology. This is clear in the book Sharāyi' which was written by 'Alī bin Bābūway for his son Muhammad. It is said that when someone needed a tradition they would find it in this book.

Other similar books are al-Maqna' and al-Hidāyah by Shaykh al-Sadūq, Muhammad bin 'Alī bin Bābūway and al-Nihāyah by Shaykh al-Tūsī.

We are not saying that there weren't scholars who were spreading traditions, but we are saying that now the traditions are organized into different subjects similar to the practice today. This is clearly seen in the books al-Kāfī by Shaykh al-Kulaynī and Man Lā Yaduruhu al-Faqīh by Shaykh al-Sadūq.

This is what generally took place in this stage. This does not mean that there weren't any scholars who added to the traditions by using intellectual deductions, as seen in the works of al-'Ummānī and al-Iskāfī.

If one wants to explain more he can say that this stage had three major schools:

١. The school of Qum and al-Ray: This school used traditions but did not use intellectual deductions.

١- Al-Najāshī, Rijāl al-Najāshī, under Abān

Some of the scholars of this school are the two Sadūqs. This was a strong school and .was relied upon by many scholars

The school of al-'Ummānī and al-Iskāfī: This school preferred using intellectual .٢ deduction to such an extent that they accepted syllogism and voting. Al-'Ummānī's full name was al-Hassan bin 'Alī bin Abī 'Aqīl. It is said that he is the first person to apply his ijtihād to actions, while mentioning the different sections of jurisprudence and mentioning the reasons behind the verdicts. He wrote the famous book: al-Mustamsik bi-habl Āl al-Rasūl. Unfortunately this book is not in existence today. Al-Iskāfī is Muhamamd bin Ahmad bin al-Junayd who lived after Abī 'Aqīl. He wrote jurisprudential books, for example Tahthīb al-Shī'ah li-ahkām al-Sharī'ah and al-.Ahmadī fī al-Fiqh al-Muhammadī. Similarly, these two books do not exist anymore

The school of Baghdād: This is also called the school of Shaykh al-Mufīd. This school .٣ tried to find a common ground between the schools of traditions and intellectual deductions. The reason behind this might be Shaykh al-Mufīd, who was a student of Ibn al-Junayd and Ja'far bin Muhammad bin Qūlūway who was from Qum and a member of the Qum school of thought. Shaykh al-Mufīd wrote many books, such as al-Maqna'ah which was commented upon by Shaykh al-Tūsī in his book Tahthīb al-.Ahkām

The Third Stage

This stage started at the era of Shaykh al-Tūsī and is the prevalent one today. In this stage the jurisprudential books changed from imitating the traditions in form and

language to writing with different terminology and mentioning different situations that did not occur at the time of the revelation of the Quran. All of this occurred with accepting intellectual deduction perfected by traditions and the acceptance of intellectual principles. The book al-Mabsūt by Shaykh al-Tūsī serves to ascertain the .conclusion that we already reached about this stage

:Other important advancements that have been made during this stage

.The sections of jurisprudence have become more specialized .١

.More subjects were introduced in accordance with needs of the time .٢

Intellectual deductions have been made stronger and their proofs have become .٣ .clearer

The relationship between jurisprudential rulings and jurisprudential principles .۴ .become clearer

.Putting more effort into investigating the chains of narration .۵

Disregarding some of the ancient texts which do not have relevance to the needs of .۶ .today's world and writing books with today's world's needs

Sources of Religious Verdicts

The Book.١

point

What is meant by the book is the Qurān which was sent down by Allah to Prophet .(Muhammad (s

Our belief is that the Qurān that is in our hands today, its meaning and words has not .been altered in any possible way

وَمَا كَانَ هَـذَا الْقُرْآنُ أَن يُفْتَرَى مِن دُونِ اللّهِ وَلَـكِن تَصْدِيقَ الَّذِي بَيْنَ يَدَيْهِ وَتَفْصِيلَ الْكِتَابِ لاَ رَيْبَ فِيهِ مِن رَّبِّ الْعَالَمِينَ

This Qur'an is not such as can be produced by other than Allah; on the contrary it is a" confirmation of (revelations) that came before it, and a fuller explanation of the Book- wherein there is no doubt - from the Lord of the

(worlds.”(1

It is a holy book and all of the Muslims agree that it was divinely inspired and that its content is entirely correct. It is the primary resource of Islam and it is an eternal authority and reference for mankind until the Day of Judgment. It says that Allah's religion is Islam and that the Muslims must always follow the Qurān. It is also a .universal legislative reference for all of mankind

The Authority of the Book

It is unanimous amongst Muslims that the Qurān is an authority for Muslims. The :proof behind this is twofold

1. Certainty that it was sent to the Prophet (s): This was established by multiple and .successive accounts passed down by Muslims from one generation to the next

2. The Qurān being sent by Allah: The miraculous nature of the Qurān in regards to both the language and the content is a proof of its composer. Moreover, no one could produce anything like the Qurān or even a single verse, in spite of the challenge posed :in the Qurān. Allah says

تَنزِيلُ الْكِتَابِ لَا رَيْبَ فِيهِ مِن رَّبِّ الْعَالَمِينَ

This is) the Revelation of the Book in which there is no doubt, from the Lord of the)“ (Worlds.”(2

Jurisprudential Verses in Quran

There are around ٥٠٠ verses in the Qurān that deal with religious rulings. These verses are a part of the sources for obtaining religious verdicts and are called: ayyāt .al-ahkām

(Traditions (Sunnah .٢

point

The Arabic term sunnah literally means a way of acting, but figuratively it means: the words, actions and affirmations of one of the ma'sumeen

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۱- Yūnus: ۳۷

۲- Sajdah: ۲

Infallibles. In order to understand this definition completely we must understand a :few terms

- Infallible: anyone who's infallibility is established. The Infallibles are the Prophet (s) .(and the twelve Imāms from the Ahl al-Bayt (a
- The sayings of an infallible: Whatever the infallible says that has anything to do with .religious rules
- .The actions of an infallible: Whatever action an infallible takes
- The affirmations of an infallible: The occurrences that happen in the presence of an .infallible to which the infallible does not oppose

The Authority of Traditions

Muslims agree unanimously that the words, actions and affirmations of the Prophet :(s) are considered an authority for all Muslims. Allah says

وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانتَهُوا

So take what the Messenger assigns to you, and deny yourselves that which he“ (withholds from you.”(١

The words, actions and affirmations of the Imāms of the Ahl al-Bayt (a) are only considered an authority only if their infallibility and their place in the line of successors to the Prophet is proved. There are numerous proofs of their infallibility in key .resource books about Imāmate and theology. Please refer to them

Consensus .٣

.The Arabic term for consensus is ijmā‘ which literally means unanimity

Shiites view consensus as a tool to unearth an Infallible's verdict. Unlike the other jurisprudential sects, Shiites do not regard consensus as an independent proof as it is .the case with the Qurān, the traditions and logic

Whenever a consensus shows us what the Infallible's verdict is, it has authority. Otherwise, it does not

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Hashr: ۷ -۱

.have authority

The question arises: Why do the Shia include consensus as one of the sources of ?religious verdicts when it is not considered an independent proof

Shaykh al-Ansārī answered this question in the following way: Consensus being a source for religious verdicts is a not an accurate statement. True Consensus is a tool to establish the truth, and in this case, both the means and the truth are considered a .proof

?How does Consensus help determine the verdict of an infallible

There is no single answer. Attempts to find an answer to this question started at the time of Shaykh al-Tūsī and continue to this day. The answers fall under two :categories

Internal consensus: A consensus of mujtahids who lived in a period of time in which .۱ one of the Infallible was present. He was part of the consensus but nobody knew him personally. Therefore, this kind of a consensus is an authority. How do we know that the infallible was amongst them? This answer to that is to be found in the books of the .principles of jurisprudence

Linguistic consensus: This consensus informs us, in an intellectual way, that the .۲ infallible agreed with the ruling but was not part of the consensus. His duty is to prevent all of the scholars from making an incorrect consensus. More answers are .found in the books of the principles of jurisprudence

Intellect .۴

point

What is meant by the intellect here is anything that man's intellect can understand and a religious ruling can be derived

(from.(١

An example is when Allah makes obligatory an action through a Quranic verse or reliable tradition, but one must perform another action to be able to perform this obligatory action and there is not any verse or tradition about this action. Man's intellect understands the relationship between an obligatory action and its precepts .becoming obligatory. This leads to certainty about the action being obligatory

An example of this is that Allah made the pilgrimage obligatory on anyone who has financial ability. This is found in both the Qurān and traditions. But, Allah did not mention that the travel from one's hometown to Mecca is obligatory, even though it is .a necessary precept to performing the pilgrimage

Man's intellect understands the relationship between performing the pilgrimage and having to travel. It is possible to say that the travel becomes obligatory by the .mukallaf having certainty, like some have said. having certainty, like some have said

The Authority of Intellect

It is self-evident that intellect itself is an authority; it does not need a proof. The .reason for this is that intellect is a foundational proof for Islamic beliefs

When Intellect is viewed as a fundamental proof for Islamic beliefs it becomes easy to reach the conclusion that it is an authority for religious rulings as well. The reason for .this is that beliefs are more important than rules; they are the roots of religion

Subjects of Jurisprudence

Point

The jurisprudential subjects are divided into two categories: acts of worship and :dealings or transactions. Dealings are further divided into

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Muhammad Bāqir al-Sadr, Halaqah ٢, al-Dalīl al-'Aqlī -١

.contracts, one-party contracts and miscellaneous rulings

Al-Shahīd al-Awwal divided jurisprudence into these subjects along the mentioned foundations when he said: "All of this is divided into four parts; worship, contracts, ".one-party contracts and miscellaneous rulings

This classification is found in the books early day such as Sharāya' al-Islām by .Muhaqiq al-Hillī

The subject of taqlīd or imitation (following a specific scholar) is mentioned in the books of jurisprudence, along with subjects relating to it, in the introduction section. They say that it is obligatory for every mukallaf who has not reached the knowledge level of ijtihād to either follow someone in taqlīd or practice precaution in worship and transactions, even if these are regarded recommended or permissible actions, except .where the ruling is self-evident

The condition for practicing precaution is that one is knowledgeable of the situations where precaution is applicable (only a few people actually do). Without practicing taqlīd, the acts of worship and daily dealings of an individual - unless he or she is (capable of precaution- are considered invalid.(١)

:Then the section of worship is mentioned

Worship is an action that depends on having the intention of being close to Allah, for .example, performing salat prayer

:Muhaqiq al-Hillī mentioned ten different subjects under the acts of worship category

١. Spiritual purification (tahārah): Spiritual purification is the use of a pure substance conditional upon an intention.(٢) There are two types of spiritual purification; spiritual purification from physical impurities that stem from the body (khabath) and spiritual .(purification from spiritual impurities (hadath

Spiritual

۱- Imām al-Khomeinī (r), Tahrīr al-Wasīla, page ۴

۲- Shaykh al-Tūsī, al-Mabsūt, volume ۱, page ۴

purification from a physical impurity consists of cleaning the body, clothes or anything else from the ten impure substances: urine, feces, blood, semen, touching carcass, .etc. This form of purification does not stipulate having an intention

Spiritual purification from spiritual impurities consists of using water for wudū', ghusl and tayammum. This form of spiritual purification is a prerequisite for such acts of worshipping as prayer and circulating the Ka'aba tawāf. This form of spiritual purification is broken by different natural occurrences such as sleep, urination and .ejaculation; intention is a prerequisite in this form of purification

There are eleven ways which one can use to spiritually purify something that has become physically impure. They are as follows: pure water, touching earth, sunlight, transformation, evaporation of two thirds of a liquid, transfer of human blood into a mosquito or a bug, converting to Islam, being part of something or someone pure, removing the physically impure substance and preventing an animal that has eaten physically impure substances (instead of food) from eating more physically impure .substances

۲. Prayer (salāh): Praying precludes one from committing terrible actions. It is the foundation of religion and if it is accepted all other forms of worship will be accepted .but if it is rejected all other forms of worship will be rejected

In this section the obligatory daily prayers are discussed as well as the prayers on the two holy days ('īd), the funeral prayer, the Prayer of the Signs, the prayer after tawāf and recommended

prayers nawāfil. The conditions of prayer are also discussed along with the foundations of prayer, the precepts to prayer and the actions that invalidate the prayer. The different types of prayer are also discussed, such as the prayer of a .traveler, individual prayer, congregational prayer and compensatory prayers

Taxes (zakāh): It is a form of tax which is applicable to nine different items: gold, .٣ silver, wheat, barley, dates, grapes, cows, sheep and camels. The conditions of these nine items are discussed in jurisprudence, how much must be paid and how the money should be spent. This form of tax is mentioned in the Qurān, for the most part, next to prayer. A verse that mentions how this tax should be spent is in Sūrah al-.Tawbah, verse ۶۰

The One-Fifth tax (khums): Khums is another form of tax taken from one fifth of .۴ one's property. The Sunni sects claim that this tax is applicable to war-booty alone. One fifth of the war-booty is taken and added to the Islamic treasury. The Ahl al-Bayt (a) jurisprudential sect says that war-booty is only one of the items that this tax is .applicable to

The following items are added to war-booty: mines, treasures, lawfully obtained money mixed with unlawfully obtained money in such a way that one does not know how much of it is lawful and how much is unlawful and one does not know the rightful ,owner, land that an unbeliever living in a Muslim country buys from a Muslim

treasures taken from the sea and money saved for over a year. The proof that the Ahl al-Bayt (a) sect uses, is the khums verse (al-Infāl: ۴۱) and traditions from the Ahl al-Bayt (a).

۵. Fasting (sawm): Fasting is obligatory for every a mukallaf , who has come of age and does not have a valid exception. One must fast during the month of Ramadān in every year. It is also recommended to fast on other days throughout the year, except on the two holy days (ʿīd), for it is forbidden to fast on those days. It is not recommended to fast on the tenth day of the month of Muharram. A fasting person must refrain from eating, drinking, sexual intercourse, soaking the head in water, inhaling thick smoky substances...etc.

۶. Staying in a mosque (iʿtikāf): The Arabic term iʿtikāf literally means staying in a specific place, but when used as a jurisprudential term it means staying for an extended time in a mosque in order to worship. This is an act of worship that a person does by fasting for three or more days in a mosque. The different rules and conditions of this are explained in jurisprudence. Iʿtikāf is essentially recommended, but if one performs iʿtikāf for two days, the third day becomes obligatory. One must perform this act of worship in the Holy Mosque of Mecca, the Prophet's Mosque in Medina, the Kufa Mosque, The Basra Mosque, or, at least, the main congregational mosque of a city.

One may not perform this act in a small mosque. The Prophet (s) would perform i'tikāf .on the last ten days of the month of Ramadān

Pilgrimage (hajj): The Arabic term hajj literally means intention, but in jurisprudence .٧ it is a term which comprises of different actions performed in a specified place (Mecca and its surroundings). It is obligatory on anyone who meets all of the conditions. The actions of the pilgrimage are as follows: putting on the special ihrām clothes in Mecca, stopping in 'Arafāt, staying in al-mash'ar, throwing the stones at the 'qabah, sacrificing an animal, shaving one's head, walking around the Ka'bah seven times (tawāf), performing the tawāf prayer, running back and forth between Safā and Marwah, tawāf al-nisā', tawāf al-nisā' prayer, throwing stones at the symbol of .satans, and staying at Mina

There are three kinds of pilgrimage. The first is called al-tamatu' and is obligatory on those whose homes are more than ٩٢ kilometers away from the Holy Mosque of Mecca. The second and third are called al-qirn and al-ifrād respectively. These are .obligatory on those whose homes are less than that distance

Lesser pilgrimage ('umrah): There are two types of this smaller version of . ٨ pilgrimage. The first is called al-tamatu' and is obligatory on every mukallaf who can perform the pilgrimage and lives more than ٩٢ kilometers away from the Holy Mosque of Mecca. The second type is called al-ifrād and is obligatory on anyone who is ,financially able to perform it

whether the greater pilgrimage has become obligatory on him or not, and does not .live more than ۹۲ kilometers from the Holy Mosque of Mecca

The actions that must be performed in the lesser pilgrimage are: putting on the ihrām clothes in one of the specified sites, tawāf, tawāf prayer, running back and forth from .Safā and Marwah and have one's her cut

Declaring War (jihād): There are two types of war in Islam: offensive and defensive. .۹ In Ahl al-Bayt (a) jurisprudential sect only an infallible can declare war, and that is when it becomes an obligatory duty. On the other hand, a defensive war can become .obligatory at any time and can also become obligatory upon men as well as women

War can also be divided into civil and international war. It is also obligatory to fight a group that leaves the community of an Imām, like what heepened in the case of the .Khawārij and the wars of Jamal and Siffīn

The following subjects are also mentioned under the main subject of war: rules pertaining to followers of other religions living in Muslim countries and peace treaties .between Muslim governments and non-Muslim governments

Enjoining good and forbidding evil ('amr bi al-ma'rūf wa nahī 'an al-munkar): Islam .۱۰ is a religion that deals with social issues. The importance of a healthy society is emphasized in the divine laws that were sent for mankind's success. It is obligatory, according to Islamic law, for everyone to uphold moral actions and

to fight immoral actions. This is what is mentioned under the subject of enjoining good .and forbidding evil. Refer to the verse in Sūrah Āl Imran: ۱۰۴

.There are conditions pertaining to this are mentioned in the books of jurisprudence

After the section of worship, the section of contracts is mentioned. This section has :fifteen different subjects

Trading (tijārah): Transactions like buying, criteria of the buyer and the seller, the .۱ items being bought or sold, the contract itself, the wording of the contract, different kinds of transactions: resale with specification of gain, resale with the specification of loss, and tuliyyah are also discussed. Tuliyyah is the transfer of the sold to the buyer .without any addition or subtraction from it

Collaterals (rahn): The item that is given is called a collateral, the person giving the .۲ collateral is called a rāhin. The Rāhin must offer this transaction by using any words that relay his offer and the murtahan, or person who takes the collateral, must accept (it by using any words that relay his acceptance.(۱

Bankruptcy (iflas): A bankrupt person is one who does not have enough money to .۳ pay back his debts. The Islamic jurist prevents this person from using his property .with the intent of him paying back his debts, as much as possible

Limitation of legal competence (hajr): The Arabic term 'hajr' literally means . ۴ preventing and what is meant is the prevention from spending one's money. There are many instances where one is prevented from spending his

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Imām Khomeini (r), Tahrīr al-Wasīla, volume ۲, page ۳ -۱

money due to bankruptcy (which was mentioned), a child who has not come of age, an insane person, an incompetent person and a dead person who has made a will for .over one-third of his property

Guarantee (damān): This is a contract that needs both a proposal and an . ۵ acceptance. There is a difference in guarantees between the Shia and the Sunni. The Ahl al-Bayt (a) jurisprudential sect defines 'damān' as the moving over of the .responsibility for the debt from the indebted person to the guarantor

After this the person who lent money does not have the right to ask the person he lent the money to for his money, rather he must ask the guarantor. This way, the guarantor pays back the debt and then seeks out the person who owed the money in the first place to pay him back. However, the Sunni jurisprudential sects claim that the person who lent the money can get his money from either the person he loaned it to .or the guarantor

Peace (sulh): The agreement upon giving up one's possession of an item or the yield .۶ of an utilizable thing or the yield of a right. It is not conditional on there being a fight .before it

The peace that is meant here is not the same as what is meant in the subject of war (jihād). Peace that is mentioned in the subject of war is a political agreement, but the peace that is mentioned here is

related to financial matters, for example if one owes an unknown amount of money to another he can make 'peace' with that person by paying him a specific amount of .money agreed upon by both parties

Partnership (shaarkah): Partnership means the ownership of property or a right by .٧ more than one person. An example of this is the inheritance that belongs to a few children. They are partners in the inheritance before it is divided up. Another example is when two or more people own a car, horse or piece of land, even if two people .share in a piece of virgin land that they cultivated

There are two types of partnerships: contracted and non-contracted. What were mentioned above are examples of non-contracted partnerships. Examples of contracted partnerships are business partnerships, farmland partnerships and industrial partnerships. There are many rules mentioned in the books of .jurisprudence pertaining to contracted partnership

Silent partnership (mudāribah): this is a type of contracted partnership where there .٨ is a partnership between one's property and another's work. One or more people give money to another person or persons to conduct business transactions with that .money

Silent partnership in farming and running an orchard (muzāra'ah and musāqāt): .٩ These are two types of partnerships similar to mudāribah. They are both partnerships between money and work. The difference between them is that mudārabah is a partnership between money and work in business while muzāra'ah is a partnership .between money and work in farming

For example, the owner

of a land makes a contract with a farmer and they split up the profits in an agreed upon fashion. Musāqāt is a partnership between money and work in an orchard, for example, the owner of the land makes a contract with the gardener and they split the .profits that they make from the selling fruits

One of the conditions that must be observed in a partnership between money and work, whether it is mudāribah, muzāra‘ah or musāqāt, is that if a loss the loss as well as the profit is shared, and that the profit cannot be a fixed amount of money but rather a certain percentage. This way, both the person who puts up the money and .the person who works are equal

١٠. and ١١. Trust and borrowing (wadī‘ah and ‘ārīyah): Wadī‘ah is giving a piece of one's property to another to protect it. Ārīyah or lending is letting another use one's property in order to make a profit. Both of these are kinds of trusts with the difference that in the case of wadī‘ah one gives his property to another for safe keeping and the keeper can only benefit from that property with the owner's consent. This is the opposite of ārīyah where the other person uses the property in order to make a gain .from it

١٢. Renting (ijārah): This is a contract where one rents the yield of an utilizable thing or a right to specified price. There are two types of renting. The

first is where one rents a piece of property at a specified price – as in renting a house, a car or even clothes- and the other is where one hires a person perform a certain .work, for example sowing clothes, cutting hair, building a house or other things

Renting is similar to buying and selling because two pieces of property are being exchanged, with the difference that in buying and selling a piece of property is exchanged with another while in renting a piece of property is exchanged with the .right to make use of another piece of property

There is a similarity between renting and ārīyah. In both renting and ārīyah utilization occurs, however, with renting the person pays for the ability to use the other's property while and in ārīyah the person does not pay which means he does not have a .right in using the property

Representation (wakālah): allowing another to act in lieu of someone during his life. .۱۳ An example of this is that man, nowadays, needs someone to represent him in a courtroom or a representative in a contract, for example, business contracts, renting, .ārīyah, trusts, religious endowments, divorce, etc

The person who is being represented is muwakkil, the person who is representing is .muwakkal or wakil and the transaction is wakalah or representation

Religious endowment and charity (waqf and sadaqah): Waqf means to give away .۱۴ one's property to a special group of people. There is a difference of opinion about waqf

needing an intention of getting closer to Allah or not. Muhaqiq al-Hillī's opinion is that it intention is not a prerequisite because waqf and sadaqah are mentioned in the .section of contracts, not worship

There are two types of waqf, specific and general. Each one of these has their own .special laws

Religious endowment of a house or yield (sukna and habs): These are similar to .۱۵ waqf. The difference is that in waqf the property is given away forever and the person .is not able to retrieve his property

Habs is when a person allows another to use the yield of his property in order to perform humanitarian services for a specific period of time after which the property is .returned to its owner

Sukna or habitation is when someone allows another to live in his house for a .specified period of time after which the property is returned to its owner

Gifting (hibāh): One of the things that one can do with his possessions is to give .۱۶ them away. Gifting can be either with receiving something in return, or without. One is not able to take back a gift for which something was given in return, but one can take back a gift in which something was not given in return for it, except if it was gifted to a .relative or the if the gift is no longer in existence

Racing and shooting (sabq and rimāyah): These are two forms of contracts that are .۱۷ ,conditional upon racing

involving the use of horses or camels, and shooting. Islam has forbid all kinds of gambling except these kinds because they improve military skills and improve one's ability to do well in war times. Racing and archery are related to the section on jihād.

۱۸. Will (wassiyāh): A will is making someone the possessor of an item or a yield after one's death. This is according to the will one makes regarding his possessions and small children (if it is allowed to make a will regarding the raising and protection of one's children) and occurs after his death. In a will, a person has control over only one third of his total possessions, to be given away or used in whatever many he decides.

Muslim jurists have divided a will into three parts. First is property, one makes another the owner of a certain part of his property. Second is contracts, one pays another to represent him in performing a pilgrimage, zīyārah, prayer, fast are any other righteous deed. Third is freeing, one frees one of his slaves, for example.

۱۹. Marriage (nikāh): Jurists mention the conditions of the marriage contract. Then they mention whom we can't marry (mahāram), for example a father can't marry his daughter, a mother can't marry her son, a sister can't marry her brother and so forth. Then they mention the two forms of marriage; the permanent and the temporary. Then they mention what happens if the marital duties are violated. Then the jurists mention

.the concept of adequate support, which is one of the wife's rights with the husband

This is the end of the section on contracts. Muhaqiq al-Hillī mentioned that there were ۱۵ different subjects within this section, but then mentioned ۱۹ of them. It is not understood why. Maybe it was a mistake or maybe he mentioned some of the .subjects together

The third section that Muhaqiq al-Hillī mentioned is one-party contracts. There are ۱۱ .subjects mentioned within this section

Divorce (talāq): Divorce is when a man annuls his marriage contract. Divorce is .۱ either forever (bā'in) or not (raj'ī). If the divorce is raj'ī, the man can return to his .marriage during the specified time during which the woman cannot remarry

For divorce to be valid, it must not be initiated when the wife is having her menstrual period and that there must be two just witnesses available. The Prophet of Islam said: ".“Allah loathes divorce although it is a permissible action

When divorce is requested by either the the wife or both parties it is called khal' and .۲ mubārah: These are two forms of irreversible bā'in divorce. Khal' is a form of divorce where the wife forces the husband to divorce her by giving him back part or the entire dowry; i.e. whatever the man would accept to divorce her. If he chooses to divorce .her he cannot return to her unless she gives him permission

Mubārah is similar to khal', but in this case both parties opt for

the divorce. Here, the woman can choose what she wants; with the condition that it .does not surpass her dowry

A pre-Islamic form of divorce (zihār): Zihār is a form of divorce that was prevalent .۳ during the pre-Islamic era, or the so-called Era of Ignorance. It is where the husband says to the wife: “You are to me like the back of my mother.” This was enough for the couple to become divorced. Islam does not accept zihār as a form of divorce. Rather, Islam says that it is forbidden to say this and if one does he must pay a penalty, which is freeing a slave. If one cannot find a slave he must fast two months in a row. If one is unable to fast he must feed sixty poor people. It becomes forbidden for the husband to have intercourse with his wife after he said the mentioned sentence and before he .paid the penalty

Abstinence vow of a husband (īlā'): Īlā' is a kind of vow where a husband vows not to .۴ perform intercourse with his wife forever, or at least more than four months, in order to punish her. If the wife takes her case in front of a judge the judge will force the man to take back his vow or divorce his wife. If he decides to take his vow back he will have to pay the penalty. Taking back a vow is forbidden except in this case where it .becomes obligatory

Cursing .۴

la‘ān): La‘ān is also related to the relationship between a husband and wife. It is a) kind of curse from one side against the other. If a husband claims that his wife committed adultery but does not produce four witnesses, he will be subject to the punishment of false testimony, except if he performs la‘ān. If he performs la‘ān his .wife will be forbidden for him forever

La‘ān must be performed in front of a judge. The man must say four times: I bear witness, in front of Allah, that what I said about this woman is true. Then he must say: The curse of Allah is upon me if I am a liar. Then the woman must say four times: I bear witness, in front of Allah, that he is a liar. Then she must say: May Allah become .angry with me if he is truthful

.In this way the husband and wife are separated from each other forever

Freeing a slave (‘itq): Islam has many teachings regarding slavery. Slaves are only .۶ taken from prisoners of war. The purpose behind slavery is not to use the slave but rather it is for them to live in a Muslim family and to become Muslim. The goal is not to make a slave remain a slave forever, instead it is to teach a disbeliever Islam and then give him social freedom after he has attained spiritual freedom. So, the goal of slavery is to free the slaves and there are many

different ways to free a slave in Islam. For this reason, jurists have called this subject .freeing a slave, not slavery

:Jurists have said that there are four ways to free a slave

- A slave owner freeing a slave because of a religious penalty or just getting closer to .Allah
- Freeing part of the slave, half of him, a third of him, a fourth of him or a tenth of him .for any reason
- If someone enslaves his parents, grandparents, children or grandchildren. In Islam .this form of slavery does not exist and the relative would be automatically freed
- .If a slave has certain bodily ailments, for example if he is blind or has leprosy

۷. Tadbīr, mukātabah and istīlād: These are three cases which necessitate freeing a slave. Tadbīr is when the slave owner makes a will to free the slave after his death. Mukātabah is when the owner and the slave make a contract for the slave's freedom after he pays a sum of money. Allah orders the slave owners to make a contract with a slave if the slave wishes and the slave is a believer. Allah also says that some money should be given to him to help him with life's expenses.(۱) Istīlād is when a women slave bears the master's child. After the slave owner's death the mother becomes the slave of the child and, as was mentioned earlier, a child cannot be the owner of his .mother, so she becomes free

۸. Confession

۱- Refer to Sūrah Nūr, verse ۳۳

iqrār): Confession is one of the legal subjects of Islam. If a person claims that another)
owes him money he must put forth evidence. If he cannot produce evidence his claim will be dismissed. However, if the other person confesses to the fact that he owes the plaintiff money, his confession will take the place of the missing evidence.

۹. Reward (ju'ālah): Ju'ālah is similar to hiring a person to perform work, except in ju'ālah a specific person is not hired but rather the person says that he would pay a certain amount of money to anyone who performs a specific work.

۱۰. Vows (aymān): Aymān is the plural of the Arabic term yamīn which consists of two types of vows: halaf and qasam. If a person vows to perform a certain action it is obligatory on him to perform it. Of course there are conditions:

- When the vow is taken in Allah's name. It is not obligatory to carry out a vow taken in the Prophet's, Imām's or Qurān's name.

- The action has to be a permissible one. It is not obligatory to carry out a vow made to perform a forbidden or disliked action.

Examples of correct vows are to read so and so good book from cover to cover or to brush one's teeth every day. If one does not carry out a correct vow he must pay the penalty.

۱۱. Pledge (nathr): A pledge is different than a vow and it has specific wording.

If a person wants to pledge to perform the daily recommended prayers he must say: "lillah alayi (literally translated as for Allah on me, or I commit to Allah) to perform the daily recommended prayers every day." The pledge is conditional on the fact that the action is beneficial for one's religion or worldly affairs. A pledge to perform an action that is neither beneficial nor harmful is invalid.

The wisdom behind carrying out the vow or pledge is because they are types of contracts made with Allah and it is obligatory to be true to one's contracts that he makes with other people(۱), so it is also obligatory to be true to the contracts he makes with Allah.

Miscellaneous Rulings

The forth section of jurisprudential rulings is the miscellaneous rulings. Miscellaneous rulings does not have a specific definition, rather Muhaqiq al-Hillī put everything that was not acts of worship, contracts or one-party contracts into this section. He divided this section into twelve subjects:

۱. Hunting and slaughtering animals (sayd and thibāhāh): Before anything, we will say: "An animal whose meat is lawful to eat becomes lawful when it is slaughtered in a specific way, fished in a specific way, hunted by a trained dog (in relation to some animals) or hunted by a weapon that has a spearhead, like an arrow or spear."

If an animal is slaughtered or hunted in the above-mentioned method, the rulings of a tathkīyah(۲) (it becoming lawful to eat) will apply to it, not the rulings of a

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۱- Refer to ۵:۱

۲- Opposite of a carcass.

.carcass. A carcass is spiritually unclean and is a forbidden item to eat

Hunting is only allowed on the wild animals whose meat is npermissible, like gazelle, mountain goats, wild cows and the likes. Hunting is not allowed on domesticated .animals like sheep and cows

The use of dog that is used to hunt is conditional on it being trained to do so; the killed animal that is retrieved by an untrained dog is not permissible to eat. Similarly one is .unable to use other predatory animals

The weapon used to hunt is conditional on it being made out of iron, or at least another material that is mined; so it is not allowed to hunt with a weapon made out of rock. Another condition is that the person hunting or slaughtering an animal must be a Muslim and must start his action by the reciting the name of Allah. There are other .conditions as well

Foods and beverages (at'amah and ashribah): There are a series of rulings in Islam .۲ regarding eating and drinking, given to make sure one uses nature beneficially. Examples of these are hunting and slaughtering animals, which have been mentioned, and food and drinks. Islam generally permits beneficial items and forbids harmful items, but does not satisfy itself with this general principle. In some cases the harm of a certain item is mentioned which necessitates staying away from it or the .benefit of an item is mentioned which allows the usage of it

There are

two types of foods: animal and non-animal. Animals are divided into two categories: sea animals and land animals. None of the animals in the sea are allowed except fish types that have scales. Land animals are divided into two categories: wild and domesticated. From amongst the domesticated animals cows, camels and sheep are permissible. Horses, mules and donkeys are also permissible but it is not recommended to eat them. Dogs and cats are forbidden to eat. From amongst the wild animals, predatory animals and insects are forbidden to eat, but wild cows, wild donkeys and mountain goats are permissible. Rabbits are also forbidden to eat, even .though they are not predatory animals

Different kinds of birds are permissible to eat, for example pigeons, ducks and .chicken. Predatory birds are forbidden to eat

It is forbidden to eat non-meat items if they are a spiritually unclean substance or a spiritually clean substance that has become spiritually unclean. It is also forbidden to eat anything that is harmful according to the general public. So, for example, it is .forbidden to eat poison, even if it is tasty

It is forbidden to eat dirt, whether it is harmful or not. It is also forbidden to drink any .intoxicating substance or eat someone else's food without their permission

Usurpation (ghasb): Usurpation is using the property or rights of another without .۳ consent. This is forbidden and one becomes accountable to the owner if his property becomes destroyed. It is forbidden to use anything that

has been usurped, meaning that wudū would become invalid if performed with usurped water or one's prayer salat would become invalid if performed wearing .usurped clothes or on an usurped place

Right of pre-emption (shuf'ah): The right of pre-emption is the right that a partner .۴ has to purchase the partnership of a third party who bought it from his partner. So, if two people purchase an item jointly and one of them sells his share the other has the .right to purchase the share from the third party at the same price

Cultivation of virgin land (ihyā' al-mawāt): Cultivation or revival of moorland for .۵ farming purposes. The Prophet of Islam (s) said: "Whoever cultivates a piece of ".moorland, it becomes his

.There are many issues dealt with in this section

Lost property (laqtah): The general meaning of lost property is property that that .۶ the owner lost and nobody else has obtained it. There are two kinds of this lost .property: animal and non-animal

The finder does not have the right to take the property as his own if it is an animal and he does not fear that it will die. But, if he does fear that it will die, for example, if he finds a sheep in the middle of the desert, he can take it as his own but he must search for its owner. If he finds the owner he must give the sheep to him, but if he does not find the owner then it becomes

a property with an unknown owner which sin this case should be spent on the poor .with the permission of a judicator

If the lost property is not an animal and worth less than half of a mithqāl(١) of a silver coin, the finder can take it as his own. But, the finder must declare that he has found the lost item and search for its owner for one year if it is worth more than the above mentioned amount (naturally, items that would go bad, like fruit, are not included in this ruling). If the owner was not found and the finder found the item in the Holy Mosque of Mecca, the finder can do one of two things: he can give it away as charity and give the price of the item to the owner, if he ever finds him, or he can keep it for .the owner

If he found it anywhere outside of the Holy Mosque of Mecca he can do one of three things: he can take ownership of the item and owe the owner the price of the item if the owner is found or he can give it away as charity and pay back the owner if found .or keep it as a trust for the owner

If there is no sign on the item indicating the owner there is no need to declare that one has found it, rather, the finder will be able to choose from the three choices .above

Inheritance .٧

.An old unit of measurement -١

mirath): The rules of inheritance in Islam are obligatory to follow. It is not permissible) for the deceased (during his life) to split up the inheritance however he desires or to give all of his possessions to one person. The division of property is done on three .levels; when there is a person on one level, the next levels do not receive inheritance

The first level: Parents and children. If the children are dead at the time of the division, .grandchildren get the inheritance

The second level: Grandparents, brothers and sisters and if one's brothers and sisters .died, nieces and nephews

.The third level: Aunts and uncles and their children

These are according to family relations, but if one is related because of a reason, for .example marriage, they inherit in every level

The exact amount that everyone inherits is explained in detail in the books of .jurisprudence

Judgment (qadhā'): It is the judgment made between people in order to settle their .٨ disputes. There are many issues addressed in this section that cannot be explained :here, but we will mention some brief points

The court system in Islam is a special system that makes sure that justice is served in a precise way. One of the ways to prove this is by mentioning the special conditions that Islam gives for one to become a judge. Some of the conditions are: He must be a mujtahid on a scholastic level and his ijtihād must be established. His morals must also .be in congruence with Islam

Another condition is that he must be pious and stay away from vices, even the ones that have nothing to do with being a judge. The judge is not allowed to take money from the defendants or the plaintiff's, rather he is awarded a large sum of money .from the Muslim nation's treasury

Confessions and witnesses (and nowadays oaths) are effective in proving or .disproving one's claim in the Islamic court system

Being a witness (shahādah): Witnessing is a branch of the section of judgment. .٩ Confessions fall under the same category. If one claims, for example, that another person owes him money, the other person can either confess to the claim or denies it. If he confesses it is enough for the judge to order that the money be paid. If he .rejects the claim, the plaintiff must bring evidence to prove his claim

One way of provide evidence is to produce a witness. If he has a witness and all of the conditions of being a witness and giving testimony are observed, his claim will be proved. The defendant does not have to provide a proof that he is truthful. Sometimes .the defendant has to swear an oath that he is truthful

Fixed and open legal punishments (hudūd and ta'zīrāt): These punishments are .١٠ related to Islam's penal system and are also related to the sections of judgment and witnesses. Islam has given certain punishments for certain crimes which are ,supposed to be carried out in every situation

every place and every age. These punishments are called hudūd. There are some punishments that are up to the judge to determine, where he can look at the situation .and make the punishment more or less severe. These punishments are called ta'zīrāt

We will mention some of the hudūd, briefly, because mentioning them in length should .be done in other books

The punishment for adultery of two married people who can easily be with their • spouse is stoning. If one of the adulterers was not married or could not easily be with his spouse he or she would be given ١٠٠ lashes, except if the adultery was committed with one of his or her family members (mahāram) where the punishment would be .death

The punishment for homosexuality is death by the sword, throwing him or her off of • .a high mountain or building or burning him alive

The punishment for wrongly accusing someone of a crime is ٨٠ lashes. Wrongly • accusing someone of a crime means accusing a man or woman of committing .adultery without having enough witnesses

.The punishment for drinking alcohol or other liquid intoxicants is ٨٠ lashes •

The punishment for theft is cutting off the four fingers of the right hand with the • .condition that the stolen item was worth at least a fourth of a dinār

The punishment of an enemy who takes up arms against the people is either killing • him by the sword, crucifixion or cutting off his right arm

.and left leg or his left arm and right leg

Retaliation (qasās): Retaliation is another form of punishment that Islam allows. In .۱۱ reality, this is the right of the victim if he was injured, but not killed or for his inheritor against the criminal. The crime should either be murder or seriously injuring one of the victim's body parts and the crime would have either committed intentionally, .similar to second-degree murder, or accidentally

Intentional murder is when the criminal hits the person with the intention of killing him, with or without the use of a weapon, resulting in the death of the victim. The .important thing here is the intention to murder

Second degree murder is when the criminal intentionally hits the person but without the intention of killing him, resulting in death. For example the intention was to wound the person but ended up killing him. Or, if the person wants to discipline a child by .hitting him and the child dies

.Accidental murder is when the killer did not have any intention of harm at all

If the murder was committed intentionally the inheritors of the victim have a right called qasās. They can use this right and have the murderer executed in an Islamic .court. Qasās does not apply to second-degree or accidental murder

Fines (dīyāt): Fines are another right that is given to the victim or his inheritors. The .۱۲ difference is that in qasās there is the eye for an eye concept while with

.dīyah, a fine is incurred

About center

In the name of Allah

هَلْيَسْتَوِيالَّذِينَيَعْلَمُونَوَالَّذِينَلَايَعْلَمُونَ

?Are those who know equal to those who do not know

al-Zumar: ٩

:Introduction

Ghaemiyeh Computer Research Institute of Isfahan, from ٢٠٠٧, under the authority of Ayatollah Haj SayyedHasanFaqihImami (God blesses his soul), by sincere and daily efforts of university and seminary elites and sophisticated groups began its activities .in religious, cultural and scientific fields

:Manifesto

Ghaemiyeh Computer Research Institute of Isfahan in order to facilitate and accelerate the accessibility of researchers to the books and tools of research, in the field of Islamic science, and regarding the multiplicity and dispersion of active centers in this field

and numerous and inaccessible sources by a mere scientific intention and far from any kind of social, political, tribal and personal prejudices and currents, based on performing a project in the shape of (management of produced and published works from all Shia centers) tries to provide a rich and free collection of books and research papers for the experts, and helpful contents and discussions for the educated generation and all classes of people interested in reading, with various formats in the .cyberspace

:Our Goals are

(propagating the culture and teachings of Thaqalayn (Quran and Ahlulbayt p.b.u.t-

encouraging the populace particularly the youth in investigating the religious issues-

replacing useful contents with useless ones in the cellphones, tablets and computers-

providing services for seminary and university researchers-

spreading culture study in the publich-

paving the way for the publications and authors to digitize their works-

:Policies

acting according to the legal licenses-

relationship with similar centers-

avoiding parallel working-

merely presenting scientific contents-

mentioning the sources-

.It's obvious that all the responsibilities are due to the author

:Other activities of the institute

Publication of books, booklets and other editions-

Holding book reading competitions-

Producing virtual, three dimensional exhibitions, panoramas of religious and tourism- places

.Producing animations, computer games and etc-

Launching the website with this address: www.ghaemiyeh.com-

Fabricatingdramatic and speech works-

Launching the system of answering religious, ethical and doctrinal questions-

Designing systems of accounting, media and mobile, automatic and handy systems,- web kiosks

Holding virtual educational courses for the public-

Holding virtual teacher-training courses-

Producing thousands of research software in three languages (Persian, Arabic and- English) which can be performed in computers, tablets and cellphones and available and downloadable with eight international formats: JAVA, ANDROID, EPUB, CHM, PDF, HTML, CHM, GHB on the website

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:Appreciation

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